



REGULAR MEETING MINUTES
for
November 13, 2002, 4:00 p.m.
4th Floor Large Conference Room
and
Art Pick Council Chambers
3900 Main Street, Riverside, CA

Present: Commissioners Brewer, Davidson, Floyd, Garcia, Gardner, Hendrick, Howe, Huerta and Ward

Absent:

Roll Call

Prior to going into closed session, Mr. Mike Lackie, attorney for the RPOA, requested to speak briefly with regard to the CPRC closed session case review. He was given permission by the Chair to speak on this issue. Mr. Lackie said he was putting the CPRC on notice that the officers whose cases were agendized for review did not receive proper notice under Gov't. Code Section 54957 (Brown Act) and that they did not consent to the Commission's review of the case materials, which he alleged are confidential under PC Section 832.7. He also stated there was legal authority that prevented police review commissions, personnel boards and grand juries from receiving police officer personnel records without the officer's consent, but didn't cite any cases. Mr. Lackie urged the Commission not to review the agendized cases. Mr. Lackie said that if the Commission proceeded with the review of cases, the commissioners were subjecting themselves to a lawsuit. Commissioner Davidson asked, "If we are conducting these meetings illegally, how are other commissions in other cities conducting their meetings?" Mr. Lackie's response was that these other boards or commissions don't get the case files, but they are advised by the chief of police as to the allegations against the officer. Commissioner Gardner asked what would happen if the Commission decided to proceed with case review in light of this notice. Mr. Lackie said that they would take whatever legal actions were available or necessary to keep the Commission from considering cases and reviewing personnel files. He stated that the commissioners would be in clear violation of the law if they proceeded with this illegal act and therefore personally accountable in a court of law. Commissioner Howe asked Commissioner Floyd to respond to these issues. Commissioner Floyd stated that his role was that of a commissioner, not a lawyer for the Commission, and that the Commission should seek advice from the City Attorney. Commissioner Floyd also said that while he felt the Commission should not concede to Lackie's points, they had just been threatened with a lawsuit and felt that the review of the cases should be postponed until a legal opinion could be obtained from the City Attorney. Commissioner Floyd made a motion to defer the review of the cases until legal advice could be obtained from the City Attorney. Commissioner Floyd also asked Mr. Lackie if he would put his concerns in writing and submit them to the City Attorney, to which he agreed. Commissioner Hendrick seconded Commissioner Floyd's motion, with Commissioner Davidson expressing his agreement with the motion.

Officer Christian Dinco, an RPOA Board Member, was also in attendance. He thanked the Commission for allowing them to speak and said that they looked forward to working with the Commission.

At the Chair's request, Ms. Sherron contacted Greg Priamos, City Attorney, requesting his presence during any further discussions with Mr. Lackie. Mr. Priamos responded immediately to this request.

Upon Mr. Priamos' arrival, he advised Mr. Lackie that this was not the time or the place to discuss this issue. Mr. Lackie and Officer Dinco departed pending Closed Session. However, after their departure, the Commission remained in Open Session to discuss their concerns with Mr. Priamos. Mr. Priamos gave the Commission several options on how to proceed immediately and said that he would be researching the issues raised by Mr. Lackie and would submit his recommendations to the Commission as soon as possible.

Commissioners Huerta and Gardner expressed their concerns at the delay the RPOA's actions will cause in the review of the complaints. Both said they were willing to go into closed session to conduct case review.

Commissioner Ward said that the RPOA attorney was trying to intimidate the Commission just as officers try to intimidate citizens on the street.

Commissioner Garcia said the Commission should defer on case review until Mr. Lackie's written notice is sent to the City Attorney and the City Attorney has had a chance to research Mr. Lackie's allegations.

Commissioner Floyd reiterated his motion that the Commission proceed with Open Session meetings but defer on Closed Session Case Review until the City Attorney receives the RPOA's position in writing and has had a chance to evaluate their position and prepare a response. Commissioner Hendrick again seconded the motion. The motion passed 8 – 1.

The Commission recessed at 5:20 p.m. to reconvene in the Council Chambers at 5:34 p.m.

Commissioner Brewer led in the Pledge of Allegiance. Ms. Sherron took roll call.

Commissioner Huerta moved to approve the minutes for the October regular meeting. Commissioner Hendrick seconded the motion, which passed unanimously.

Executive Director's Report & Comments

Mr. Williams reported that he and Commissioners Brewer and Gardner had attended the annual NACOLE Conference, which was held in Cambridge, Massachusetts. He said it was interesting to learn how many cities and counties are deciding to have civilian oversight. He also said that after he returned to California, he learned that 60% of the voters in Key West, Florida had voted for civilian oversight in their city. He noted that they had brought literature back with them and that it was available in the office if anyone was interested in looking at it.

Chairman Brewer noted that one of the reports they brought back with them was about New York City and its five boroughs. He said it was very interesting.

Commissioner Howe noted that the 2003 NACOLE Conference is going to be held in Los Angeles.

Commissioner's Comments

Commissioner Gardner asked Mr. Williams if he had learned where the "roadblock" was regarding the signing of waivers for ride-alongs. Mr. Williams said that when Commissioner Ward initially brought up the subject, the issue was the waiving of liability and medical. He said that after consulting with the City

Attorney, Risk Management and Human Resources, ride-alongs would be voluntary. Commissioner Gardner said that his interpretation of the By-Laws was that ride-alongs had always been voluntary. He said that he still wanted to know if he would have to sign the waiver if he went on a ride-along. Mr. Williams said yes, he would. Commissioner Gardner asked who made that decision. Mr. Williams said that he thought it was the Chief of Police or the Police Department after going through the City Attorney's office, but that he didn't know who initiated it and said it was probably done years ago. Commissioner Gardner said that a number of Police Department policies and procedures are waived for commissioners and restated his question: "Why do we have to sign the waiver?" Commissioner Gardner said they need to find out why. Mr. Williams said that he would draft a letter from the Chair to the Chief of Police.

Mr. Ward said that after he initially raised the issue the Commission received a response from RPD which said if a person is not a sworn police officer, they would be required to sign a waiver. He said that he had suggested that since the Commission was established by the Mayor and City Council, that perhaps the issue should be addressed at that level rather than at the level of RPD and said he thought that's what Mr. Williams was doing. Mr. Williams said that he was researching the issue and had thought he was doing what he'd been asked to do. Mr. Ward said that his concerns were that by signing the waiver, they would be signing away their rights and that should they be on a ride-along and be involved in a car accident, their respective insurance companies would nullify their coverage.

Chairman Brewer asked that a letter be prepared from the Commission to the Chief of Police or City Attorney addressing the issue.

Commissioner Huerta said that the questions she'd asked in June regarding staffing patterns for RPD had never been answered. She also asked that the Commission consider asking for a regular report from the Police Department so they could know what is going on with RPD.

Mr. Williams said that one of the things he was going to try to do in December or January was to ask the Chief to speak to the Commission. He said he also wants to have Tom Evans, Interim Assistant City Manager, speak to the Commission. Mr. Williams said that it would probably be better if the questions the commissioners were asking were asked face-to-face rather than via written communiqués.

Commissioner Huerta said she thought that would be a great forum but thought it would be better if the speaker had some idea of the questions that would be asked so they would be prepared.

Mr. Williams asked that the commissioners send him any questions they might have and that he would try to get the Chief over to speak to them.

Commissioner Gardner had one last comment, saying that the cases that were scheduled for closed session are very old with some going back to March. He said he is concerned about the length of time it takes for the Commission to receive the investigation report, noting that even with a 45-day time frame, somewhere, somehow, things are not moving as quickly as they should be. He said that if any of the problem was on the Commission's end, he wanted it addressed. But to the extent that it was on the Department's end, he said he wanted to let them know that the Commission is concerned about it.

Mr. Williams said that he couldn't address specifics, but said he knew that sometimes cases were sent back at various levels and that could account for some of the delay. He also said that there were two or three that he had sent back, but had received responses. Mr. Williams noted that when a comparison was made of the first quarters of 2001 and 2002, there was a 19-day decrease in the amount of time it took for an investigation to be completed.

Commissioner Gardner said that it just seemed that there were more old cases in the current group of cases than there had been in awhile and said that whatever the causes, they should be addressed.

Public Comment

Mary Shelton spoke regarding updating of the RPD Policies and Procedures Manual in the Main Library. She said that Policy 4.12, the Personnel Complaint policy, still has the version that was revised and signed by Ken Fortier. She noted that there were recently revised policies that were in the manual and was puzzled as to why the 4.12 revision was not included. She ended by saying that it is very important to keep the policies up to date.

Chairman Brewer thanked Ms. Shelton and asked Mr. Williams if this could be checked. Mr. Williams said that he had, in the past, spoken with Judith Auth regarding the issue and that she had told him that there was some sort of rearranging going on at the library and there was a stack of stuff to include in a number of things, but that she couldn't tell him specifically whether or not policy revisions were being inserted into the RPD Policies & Procedures manual.

Discuss and Vote on Meeting Schedules

The Executive Director referred to the memo, with commissioner and Council Chamber schedules attached that were mailed to each commissioner. He said that the memo stated that another commission has reserved the Chambers on the second and fourth Wednesdays from 2:30 until 6 p.m. He said that they have gone past 5:30 p.m. once in the past year, but that most of the time they wrap up long before 5:30. He noted that there was a potential conflict of which he wanted to make the Commission aware. He said the only other time available that coincided with everyone's schedule was the second Thursday of the month. He said that there was a conflict with one commission two or three times a year, but otherwise that date was available. He finished by saying it was up to the Commission as to what they wanted to do.

Ms. Sherron commented that there would be three Thursdays in 2003 that would cause a conflict, but said that those meetings could be scheduled for Wednesdays.

After brief discussion, the Commission did not change their decision of October 28. The regular monthly meetings will be held on the fourth Wednesday of the month with Case Review taking place at 4:00 p.m. and the regular meeting convening at 5:30 p.m. in the Council Chambers.

Discussion on Citizen Rights and Officer Safety

Commissioner Ward asked that this item be put on the agenda because he is concerned that officer safety is close to violating the rights of citizens. He said officer safety appears to rise above citizens' rights and wanted to get some discussion going so he could get it clear in his own mind where the line is between officer safety and citizen rights.

Commissioner Howe asked that he be more specific. Commissioner Ward cited incidents in which people are stopped and searched because of how they are dressed, because of the neighborhood they are in, or because they look suspicious to officers. He said that he couldn't recall a case where when an officer has come up with anything that was a threat to their safety when a search was conducted based on officer safety. He said that once the search is complete and the officer is satisfied that there is no threat to their safety, it also seems to end the concern about why the citizen is nervous or upset.

Mr. Ward said that while there is need to give attention to officer safety, there is also a need to give attention to citizen safety and that when the officer determines that the citizen poses no threat to him, that the officer should look at the fact that maybe he poses a threat to the citizen. He said it's understandable that people will be nervous when they're stopped by police, saying that anything could happen from being let go to shot.

Commissioner Davidson said that he didn't think it would be fair to make an assumption based on the numbers currently available. He noted the example Commissioner Ward gave about being unable to recall a case where an officer's safety was in question and a weapon was found. He said that you would have to have all the cases, not just the ones the Commission reviews, to know how many incidents under those same circumstances took place. He said that if it were then determined that all the stops showed no evidence of threat to officer safety – which he said he couldn't believe would be true – then it would be something to review.

Commissioner Howe said that he didn't think it would be possible to get the necessary information because there are dozens of stops made every day and that even the Police Department doesn't know which incident involves an officer safety issue and which does not because that is determined by the officer. He also said that as soon as the officer determines there is not a officer safety issue, he or she should downscale whatever action is being taken and said that he didn't think it was an issue that could be put into a statistical form of any kind.

Commissioner Floyd said that it seemed to him that the issue was really more a case-by-case kind of analysis and noted that there are certain legal standards that have been established by which these cases are to be addressed. He also noted that the threshold for an officer searching somebody based on officer safety concerns is a fairly low threshold and said that that is a fairly solid legal standard. He said that in most cases, it is found that there is legitimate officer safety concern, which he said is a very, very important consideration the Commission has to make. He also said that the Commission shouldn't always make that finding because there are cases where maybe there was an overreaction and it was an inappropriate search. He said that the Police Department has a standard on that issue and I think we'd have to apply that standard, noting that it is not only a Police Department standard, but a legal standard that the courts have decided. He said what Commissioner Ward seems to be looking for is a very close analysis of each case that is reviewed.

Commissioner Ward said that he is looking for a very close analysis. He said that, as noted by Commissioner Floyd, the officer safety issue is a very low threshold but asked if it is a threshold that rises above a personal right to equal protection under the law and a person's protection against illegal searches and seizures. He said that it seems to be a tool that is being used to deprive people of their rights.

Commissioner Hendrick disagreed, saying that he couldn't recall a single case where they'd found an officer had overreacted at that point. He said that officer safety is very important and if you're stopped by the police, the police have to have the latitude to do what they need to do and they need to be able to protect themselves. He said that Doug Jacobs was an absolute example of that and said he wouldn't want to see the Commission interfere or compromise the Police Department's ability to protect its officers in any form or fashion.

Commissioner Gardner said that the legal standard to which Commissioner Floyd referred is specific and if that standard is met, then officer safety does override a citizen's right not to be searched. He said that if the officer has met the standard, then the officer is acting within policy, but if the officer has not met the standard, then the officer has acted outside policy and that has to be determined on a case-by-case basis.

Commissioner Davidson commented that the Commission won't get a complaint from a person where an officer found a gun when a search was made because of officers' safety. He said that that person won't complain to the Commission while someone who doesn't have anything to hide and the officer found nothing, would file a complaint. He noted that the Commission will never have the other side to be able to compare just how many of these searches occur and he didn't think that the Commission could get that information.

Commissioner Huerta asked if there is a way to capture some of the data, perhaps by learning how many weapons have been seized by RPD. Mr. Williams responded by saying that first, he wasn't sure it was within the purview of the Commission and second, the numbers would be skewed because an officer may

do a quick pat down for officer safety reasons during a traffic stop, but not write a ticket. He said there is no way to capture everything. Commissioner Gardner noted that if an illegal weapon is seized, there is a record of that. But if it is a legal weapon, which could just as easily endanger an officer's life, the office may confiscate it temporarily, but then return it and there would be no record of that.

Commissioner Garcia said that he has seen, in his community, incidents in which not only did large numbers of RPD officers respond, but CHP also responded. He noted that the type of call determines the response and officer safety is a big concern.

The Chair entertained a motion to adjourn, which was moved by Commissioner Hendrick and seconded by Commissioner Garcia.

The Commission adjourned at 6:20 p.m.

Respectfully submitted,

PHOEBE SHERRON
Sr. Office Specialist